

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION AT JACKSON**

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. 1:19-cr-10042 STA
)	
THOMAS KELLEY BALLARD, III,)	
Defendant.)	

JOINT MOTION TO CONTINUE TRIAL AND SCHEDULING ORDER DATES

Comes now Leslie I. Ballin who files this Motion to Continue Trial and Scheduling Order Dates, in which the government joins, and in support would show as follows:

That the Centers for Disease Control and Prevention (“CDC”) has advised that “COVID-19 cases, hospitalizations, and deaths across the United States are rising.” Centers for Disease Control and Prevention, *Coronavirus*, available at <https://www.cdc.gov/coronavirus/2019-nCoV/index.html> (last visited November 24, 2020) (“More than 1 million COVID-19 cases were reported in the United States over the last 7 days.”).

That the Johns Hopkins Coronavirus data clearinghouse is reporting rapidly increasing rates of infection in Tennessee, *see* Johns Hopkins Coronavirus Resource Center, *Outbreak evolution for the 50 states, D.C, and Puerto Rico*, <https://coronavirus.jhu.edu/data/new-cases-50-states> (last visited November 24, 2020), as follows:

That the Tennessee Supreme Court has suspended jury trials through January 31, 2021. Tennessee State Courts, *TENNESSEE SUPREME COURT ISSUES NEW ORDER RELATED TO COURT OPERATIONS DURING COVID-19*, available at <https://www.tncourts.gov/press/2020/11/17/tennessee-supreme-court-issues-new-order-related-court-operations-during-covid-19> (Nov. 17, 2020) (last visited November 24, 2020).

That Defendant's expert and two of three government attorneys would need to travel to the Western District of Tennessee from Texas for the current trial setting in this case, when the CDC is advising against travel and gatherings, including family gatherings for Thanksgiving. Centers for Disease Control and Prevention, *Celebrating Thanksgiving*, available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/holidays/thanksgiving.html> (last visited November 24, 2020) ("[T]he safest way to celebrate Thanksgiving is to celebrate at home with the people you live with.").

That the CDC assigns its second highest of four COVID 19 risk levels ("Even more risk") to activities largely matching a courtroom setting for a jury trial:

- People are from neighboring or other communities
- You meet in an open, well-ventilated indoor space
- Most (not all) wear a mask
- Most stay at least 6 feet away from people they do not live with
- Most limit sharing of food and personal items with others

Centers for Disease Control and Prevention, *Know Your Travel Risk*, available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-risk.html> (last visited November 24, 2020) (also characterizing as incurring "[e]ven more risk" direct flights and hotel stays).

That the fairness of a jury trial to take place on the date presently set could be impacted by the unavailability or unwillingness to appear of jury venire members and witnesses, whether because they fall into an elevated health-risk category for Covid 19 exposure, or for other Coronavirus-related reasons, such as the fear of uncertainty about the impact of the virus on otherwise healthy persons and the unknown long-term impacts of the virus. *See, e.g., Mayo Clinic, COVID-19 (coronavirus): Long-term effects*, available at

<https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351> (Nov. 17, 2020) (last visited November 24, 2020) (cautioning that “[m]uch is still unknown about how COVID-19 will affect people over time,” and chronicling observations from the medical community that the disease is known to damage “the lungs, heart and brain, which increases the risk of long-term health problems”).

That FDA approval and rollout of several different Coronavirus vaccines now appears imminent. Specifically, Gen. Gustavo Perna, who is leading Operation Warp Speed’s effort to distribute Coronavirus vaccines nationwide, and Alex Azar, the U.S. Secretary of Health and Human Affairs, reported today, November 24, 2020, to ABC News, that FDA will hold emergency-authorization hearings for Coronavirus vaccines beginning December 10, and that once the FDA issues the anticipated emergency authorization, “24 hours later, [3 million of the estimated 300 million needed] vaccines are on the street.” ABC News, *General: COVID-19 vaccines will be ready for delivery 24 hours after FDA authorization, available at* <https://abcnews.go.com/Politics/general-covid-19-vaccines-ready-delivery-24-hours/story?id=74368606> (Nov. 24, 2020) (last visited November 24, 2020).

That Defendant Ballard is out on bond pending trial, and that the government does not oppose his remaining on bond under his current conditions of release.

That the parties have diligently prepared for trial after failing to reach a plea agreement after extended, good-faith negotiations; the parties are in agreement that postponing trial on the bases above would serve the ends of justice; and that the ends of justice served by taking such action outweigh the interest of the public and the defendant in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A).

WHEREFORE, PREMISES CONSIDERED, Defendant and the government pray that the Court reset trial in this case to the week of August 15, 2021, and that all deadlines in the Docket Control Order be continued to dates commensurate to the new trial date; and that the interim time be excluded under the Speedy Trial Act.

Respectfully submitted,

BALLIN, BALLIN & FISHMAN, P.C.

/s/ Leslie I. Ballin

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon all interested parties via electronic mail on this the 25th day of November, 2020.

/s/ Leslie I. Ballin